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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,760	02/08/2006	John Hatrick-Smith	550639.00005	5904
26710 7590 12/22/2009 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
FETSUGA, ROBERT M				
ART UNIT		PAPER NUMBER		
3751				
NOTIFICATION DATE		DELIVERY MODE		
12/22/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pat-dept@quarles.com

Office Action Summary

Application No.

10/539,760

Applicant(s)

HATRICK-SMITH ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-6, 8, 12-14 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 8 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 11, 2009 has been entered.

It is noted the amendments made to the specification should be re-filed with corrected references to the specification in the instant file. The 9 page specification filed June 20, 2005 (described as "Documents submitted with 371 Applications" in the electronic file) was replaced by an Article 34 amendment. The amended specification was also filed June 20, 2005 as a 7 page document. The specification amendments filed December 11, 2009 improperly refer to the 9 page specification. Moreover, the form of claim 20 filed December 11, 2009 appears to be missing text and appropriate markings indicating the changes made relative to the prior version thereof.

2. Claims 12-14 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on

February 19, 2009. The requirement is still deemed to be proper and is therefore made Final.

3. The disclosure is objected to because of the following informalities: Page 4, line 10, "3" apparently should be --4--. Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "integrates" feature set forth in claim 1 (ln. 22), and similarly claims 5 and 20, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. Claims 1, 4-6, 8 and 17-21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "the fitting is pivotally mounted about a generally vertical axis" (ln. 17). Claims 5 and 20 recite similar subject matter. This subject matter is not found in the

originally filed disclosure and is therefore considered to be new matter. No vertical axis has been disclosed. Indeed, applicant did not indicate in the response filed December 11, 2009 how such new claim language is supported by the disclosure.

6. Claims 1, 4-6, 8 and 17-21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "said fittings being pivotally moveable away from the bath wall and/or rim section and towards one another" (lns. 23-24). Claims 5 and 20 recite similar subject matter. This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. The fittings 4 are disclosed merely as being pivotally mounted in the collar 7 which in turn is fixed in an aperture in the bath wall 1 (spec. pg. 5 lns. 21-24). Indeed, applicant did not indicate in the response how such new claim language is supported by the disclosure.

7. Claims 1, 4-6, 8 and 17-21 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a fitting pivotally mounted in a collar for

water supply, does not reasonably provide enablement for only being pivotally mounted for water supply. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

8. Claims 1, 5 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to the relationship between the "another end" on line 21, and the "opposite end" on line 16 thereof. Claims 5 and 20 are similarly indefinite.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1 and 20, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Sandham.

The Sandham reference discloses a bath comprising: water outlet fittings including outlets (inherent), bodies 20 and mounting necks 17,18; and a wall/rim 8 including an aperture 13, as claimed. Re claim 1, the fittings appear to meet the structure defined by the functional language "direct a flow of water from behind onto the upper body of a bather or bathers sitting in the bath and leaning back against the wall". The bodies 20 are each elongate in a horizontal "axis" (Fig. 5). The mounting necks 17,18 each extend from closer to one end (at 18) of the fitting than an opposite end (at 17). The mounting necks 17,18 each enter the aperture 13, pivotally mount the body of the fitting universally (i.e. all directions), and supply water (from 16). The one ends of each fitting are closer the other fitting relative to "another end of each said fitting" (e.g. at 17). The bodies 20 of each fitting are integrated with the bath wall 8 (Fig. 1). Portions of each of the fittings are moveable away from the bath wall, and towards the other fitting (Fig. 4).

Applicant argues at page 12 of the response Sandham does not disclose water outlet fittings which are "mounted integrally in the tub". However, this argument does not appear reflective of the rejected claim language as no integral feature is recited. In any event, the water outlet fittings in Sandham are pivotally mounted in an aperture in the tub wall, as noted, which meets the rejected claim language. Applicant's argument is unpersuasive.

11. Claims 1, 4, 20 and 21, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandham and Gardenier et al.

Re claim 1, the choice of water outlet fitting positioning would appear an obvious choice to be made. The Gardenier et al. (Gardenier) reference teaches positioning an outlet fitting to direct water to the shoulder blades and along the back of a user (Fig. 11).

Re claim 4, although the outlets of the Sandham bath are not elongate, as claimed, attention is directed to the Gardenier reference which discloses an analogous bath which further includes outlets 28 which are elongate (Fig. 4). Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate an elongate shape with the Sandham outlets in order to enhance hydrotherapy.

Re claim 21, although the Sandham bath does not include a pillow, as claimed, attention is again directed to Gardenier which discloses a head rest 130 (Fig. 11). Therefore, in further consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a head rest with the Sandham bath in order to enhance comfort. Moreover, it would have been obvious to construct the head rest of soft material (if not already) in order to further enhance comfort. A soft head rest would meet the "pillow" limitation recited in the claim.

Applicant argues at page 12 of the response neither Sandham nor Gardenier teach water outlet fittings which can be adjusted to fit different bathers. The examiner disagrees. Sandham discloses fully adjustable water outlet fittings (pg. 1 lns. 22-25), and Gardenier teaches positioning an outlet fitting to direct water to the shoulder blades and along the back of a user (Fig. 11). The combined teachings of Sandham and Gardenier establish a prima facie case of obviousness. Applicant's argument is unpersuasive.

12. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Sandham and Leaverton et al. '625.

The choice of water outlet fitting positioning would appear an obvious choice to be made. The Leaverton et al. '625 (Leaverton) reference teaches positioning an outlet fitting to direct water to the neck, head or shoulder of a user (col. 3 lns. 33-37).

Although the wall of the Sandham bath is not curved, as claimed, attention is again directed to the Leaverton reference which discloses an analogous bath which further includes a curved wall 15. Therefore, in consideration of Leaverton, it would have been obvious to one of ordinary skill in the bath art to associate a curved shape with the Sandham wall in order to enhance comfort.

Applicant argues at page 13 of the response neither Sandham nor Leaverton teach water outlet fittings which can be adjusted to fit different bathers. The examiner disagrees. Sandham discloses fully adjustable water outlet fittings (pg. 1 lns. 22-25), and Leaverton teaches positioning an outlet fitting to direct water to the neck, head or shoulder of a user (col. 3 lns. 33-37). The combined teachings of Sandham and Leaverton establish a prima facie case of obviousness. Applicant's argument is unpersuasive.

13. Claims 5, 6, 8 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandham and Leaverton as applied to claim 5 above, and further in view of Gardenier.

Re claim 6, although the Sandham bath does not include a pump/circulation system, as claimed, attention is directed to the Gardenier reference which discloses an analogous bath which further includes a pump/circulation system (col. 4 lns. 30-41). Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a pump/circulation system with the Sandham bath in order to enhance hydrotherapy.

Re claim 8, to associate a pillow with the Sandham bath would have been obvious to one of ordinary skill in the art in consideration of Gardenier analogous to the discussion supra.

Re claim 17, although the Sandham bath does not include spa outlets, as claimed, attention is directed to the Leaverton reference which discloses an analogous bath which further includes spa outlets 72. Therefore, in consideration of Leaverton, it would have been obvious to one of ordinary skill in the bath art to associate spa outlets with the Sandham bath in order to enhance hydrotherapy.

Re claim 19, to associate an elongate shape with the Sandham outlets would have been obvious to one of ordinary skill

in the art in consideration of Gardenier analogous to the discussion supra.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/
Robert M. Fetsuga
Primary Examiner
Art Unit 3751